

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on : 11.10.2007

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IA No. 11837/2007 & CS (OS) 610/2007

JANSPORT APPAREL CORP.

.....Plaintiff

- versus -

D. S. PAUL

.....Defendant

Advocates who appeared in this case:

For the Plaintiffs : Ms Ishani Sahiwal

For the Defendants : Mr Nishant Kumar

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. This is an application under Order 23 Rule 3 CPC read with Section 151 of the Code of Civil Procedure, 1908 filed by the plaintiff and the defendant, requesting this Court to record the compromise that had been arrived at between the parties and to pass a decree in terms of prayers contained in paragraph 23 (a), (b) and (d) of the plaint in favour of the plaintiff and against the defendant. It is also stated that the plaintiff gives up all other prayers.

2. The plaintiff had filed the suit for permanent injunction restraining the defendant from infringing the plaintiff's trademark and/ or passing off its goods as those of the plaintiffs. The suit was also for damages.

3. During the pendency of the suit, the defendant and the plaintiff have decided to settle the matter and have arrived at a compromise. The defendant has acknowledged the plaintiff to be the proprietor of the trademark "JANSPORT" in respect of luggage, apparel and other lifestyle goods. The defendant has undertaken that it will not manufacture, sell, offer for sale, advertise or directly or indirectly deal in leather and imitation leather bags, duffel bags, briefcases, back packs, rucksacks, travelling bags, umbrellas and related products under the trademark "JANSPORT" and any other mark as may be deceptively similar to the plaintiff's trademark "JANSPORT" so as to amount to infringing the trademark No. 730987 in Class 18 or to do any other thing which would be likely to lead to passing off the defendant's goods as those of the plaintiffs. The defendant has also submitted that it has destroyed all labels, packaging, dies, blocks, stationery and all other printed matter bearing the trademark "JANSPORT" and has no inventory of the infringing material in its possession. The 34 bags that were seized by the Local Commissioner and which were handed over to Ms Mamta Taneja on *superdari*, shall now be handed to the plaintiff who shall remove the "JANSPORT" logo

from those bags and after such removal, which shall be in the presence of the defendant, return the same to the defendant.

4. There are other undertakings which are contained in the application. The application is signed by the defendant and by Mr Anand Banerjee, who is the constituted attorney of the plaintiff. It is also signed by the respective counsel for the parties. The application is supported by affidavits of said Mr Anand Banerjee and Mr D. S. Paul (the defendant). The application is marked as Ext. C-1.

5. I have examined the the contents of the application as well as the undertakings given therein. The undertakings are taken on record as also the compromise which is indicated in the said application. The settlement/ compromise between the parties is lawful and, therefore, there is no impediment in passing the decree as prayed for. Accordingly, the suit is decreed in terms of paragraphs 23 (a), (b) and (d) in favour of the plaintiff and against the defendant. The suit in respect of other prayers is dismissed. This application (Ext. C-1) shall form part of the decree.

6. The present application, the suit and IA No. 3879/2007 stand disposed of. The next date of 23.10.2007 stands cancelled.

**BADAR DURREZ AHMED
(JUDGE)**

**October 11, 2007
SR**